

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

May 25, 2006

9:30 a.m.

(Original)

Reported By:

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Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION, convened at 9:30 a.m. on May 25,
3 2006, at the State of Arizona, Clean Elections
4 Commission, 1616 W. Adams, Conference Room, Phoenix,
5 Arizona, in the presence of the following Board members:

6 Ms. Marcia Busching, Phoenix, Chairperson
7 Mr. Gary Scaramazzo, Page, Teleconference
8 Ms. Ermila Jolley, Yuma
9 Mr. Carl Kunasek, Maricopa, Teleconference
10 Ms. Royann J. Parker, Pima

OTHERS PRESENT:

11 Mr. Todd Lang, Executive Director
12 Ms. Paula Ortiz, Executive Assistant
13 Ms. Colleen McGee, Fiscal Service Manager
14 Mr. Michael Becker, Voter Education Manager
15 Mr. Daniel Ruiz II, Campaign Finance Manager
16 Mr. Eric Peterson, Administrative Counsel
17 Mr. Jacob Shuler, Law Clerk (Intern)
18 Ms. Diana Varela, Assistant Attorney General
19 Mr. Eric Ehst, Clean Elections Institute
20 Ms. Lauren Lowe, Perkins Coie Brown & Bain
21 Ms. Nancy Read, Secretary of State's Office
22 Mr. Christian Palmer, Arizona Capitol Times
23 Ms. Lydia Gomez, Clean Elections Institute
24 Mr. Paul Peterson, OMA
25 Mr. Andy Gordon, Copper & Gordon
Mr. Rick Murphy, Representative
Mr. Alberto Gutier, Citizen
Mr. Lee Miller, Miller, LaSota & Peters
Mr. Montgomery Lee, Assistant Attorney General
Mr. Dennis Welch, East Valley Tribune
Mr. Howard Fischer, Capital Media Services
Mr. Chip Scutari, The Arizona Republic
Mr. Robbie Sherwood, The Arizona Republic
Mr. Christian Palmer, Arizona Capitol Times
Mr. Paul Davenport, The Associated Press
Mr. Jared Serbu, KFYI-AM
KPNX-TV NBC (Ch. 12), cameraman
KPHO-TV CBS (Ch. 5), cameraman

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P R O C E E D I N G

CHAIRPERSON BUSCHING: Good morning, everyone. This is the Citizens Clean Elections Commission. The place is 1616 West Adams, Suite 110, Phoenix, Arizona. Today is Thursday, May 25th, 2006. The time is 9:30 a.m.

I want to note for the record that all Commissioners are either present in person or by telephone. Pursuant to ARS 38-431.02, notice is hereby given that we are holding a regular meeting open to the public and at any time the Commission may vote to go into executive session which will not be open to the public for any item listed on the agenda for obtaining legal advice. All matters on the agenda may be discussed, considered, and are subject to action by the Commission.

Today because of the items on the agenda, we will limit comments from the public to 10 minutes for regular statements and rebuttal statement will be limited to five minutes.

I've called the meeting to order so the second meeting [sic] on the agenda is approval of the April 27th, 2006 Commission meeting minutes. Has everyone has a chance to review the minutes from April 27th?

1 COMMISSIONER KUNASEK: Yes.

2 CHAIRPERSON BUSCHING: If so, are there any
3 additions or corrections? If not, the Chair will
4 entertain a motion.

5 COMMISSIONER JOLLEY: I'll move we accept the
6 minutes as stated for the April 27th Commission meeting.

7 COMMISSIONER SCARAMAZZO: I'll second that.

8 COMMISSIONER KUNASEK: I'll second it.

9 CHAIRPERSON BUSCHING: It's been moved by
10 Commissioner Jolley and seconded by Commissioner
11 Scaramazzo that we accept the April 27th, 2006 minutes
12 as prepared. All in favor say, "aye."

13 (Chorus of ayes.)

14 CHAIRPERSON BUSCHING: Opposed, nay?

15 Chair votes aye. Motion carries.

16 Item III on the agenda, Executive Director's
17 report. Mr. Lang?

18 MR. LANG: Thank you, Madame Chair. Good
19 morning, Commissioners. You have my report before you.
20 I'll just highlight a few matters. First, we're fully
21 staffed now. Daniel Ruiz is our campaign finance
22 manager, and Eric Peterson is our administrative
23 counsel. We also have a law clerk Jake Shuler from U of A
24 and the three of them have been great. We have a
25 nice little team going and we're doing good work. So,

1 it's a fun place to be.

2 Regarding participation. The only update there
3 is that we funded four more -- we approved four more
4 candidates yesterday for funding. They have not yet
5 received their checks but things are going smoothly
6 there as well.

7 Voter education. I'm really pleased that Mike
8 Becker, Paula Ortiz, and Christina Murphy were able to
9 get sponsors for all our debates. And so now we have
10 that covered and we're in good shape regarding the
11 debates.

12 And, unless you have other questions, that
13 concludes my report.

14 CHAIRPERSON BUSCHING: When will the debates
15 start?

16 MR. LANG: Mike, in June?

17 MR. BECKER: The debates start July 11th for
18 the primary.

19 CHAIRPERSON BUSCHING: And will go through
20 when?

21 MR. BECKER: August 3rd is the drop-dead date.

22 CHAIRPERSON BUSCHING: All right.

23 COMMISSIONER KUNASEK: This is Carl. How many
24 locations throughout the state will the debates be held
25 in?

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1 CHAIRPERSON BUSCHING: Mr. Becker?

2 MR. BECKER: Madame Chair, Members, the debates
3 are going to be held -- I don't know the exact numbers,
4 but we have locations in Tucson, in Phoenix, and I
5 believe in Yuma we're looking at. So, we are looking
6 throughout the entire state; Kingman, different places
7 like that. So we're in good shape when it comes to the
8 entire state.

9 COMMISSIONER KUNASEK: Thank you.

10 MR. BECKER: You're welcome.

11 CHAIRPERSON BUSCHING: For the most part, are
12 there debates in each of the legislative districts?

13 MR. BECKER: Yes. Debates will be held in each
14 legislative district.

15 CHAIRPERSON BUSCHING: Okay. That's good. Any
16 other questions of Mr. Lang or Mr. Becker?

17 If not, we'll go to Item IV on the agenda,
18 selection of cover designs from Tieken/Moret Design &
19 Marketing for the 2006 primary and general election
20 candidate statement pamphlets.

21 Mr. Lang or Mr. Becker? Mr. Becker.

22 MR. BECKER: Madame Chair, Members, before you
23 you have four versions of what could be the covers for
24 the primary candidate statement pamphlets and general
25 candidate statement pamphlets. Commissioner Parker has

1 a better version of it. It's easier to see in what she
2 has.

3 But those are the four choices. We are asking
4 the Commission to take a look and decide on two of them.
5 One would be the cover for the primary statement
6 pamphlet and the other will be the general statement
7 pamphlet. We asked Tieken/Moret to come up with several
8 different designs and this is what they come up with.
9 And we're very excited with what they have and we hope
10 that you are as well.

11 I'll be happy to answer any questions.

12 CHAIRPERSON BUSCHING: Commissioner Jolley.

13 COMMISSIONER JOLLEY: Yes, I have a question of
14 Michael Becker.

15 I guess it's been the practice of the
16 Commission to have a cover for the primary pamphlet and
17 then one for the general?

18 MR. BECKER: Correct?

19 COMMISSIONER JOLLEY: So we have separate
20 covers?

21 MR. BECKER: Right. Right. Madame Chair,
22 Members, you will choose two different covers today.
23 One will be specifically for the primary pamphlet and
24 the other specifically for the general pamphlet.

25 COMMISSIONER KUNASEK: This is Carl.

1 CHAIRPERSON BUSCHING: Commissioner.

2 COMMISSIONER KUNASEK: How do you identify --
3 I've got four copies in front of me. I don't see any:
4 One, two, three, four or A, B, C, D. How do we identify
5 which copy we recommend?

6 CHAIRPERSON BUSCHING: Mr. -- Commissioner
7 Kunasek, just describe it because they are not
8 separately identified other than by the fact that
9 they're different. So what we need to do is decide
10 which are the top two that we like and then decide one
11 to be used for the primary cover and one to be used for
12 the general cover.

13 Do you have a preference, Mr. -- Commissioner
14 Kunasek?

15 COMMISSIONER KUNASEK: Well, yeah, I like the
16 one with the saguaro cactus on it. And although it's
17 too late, it would be nice if there was a statue of
18 liberty superimposed over maybe the right side of it,
19 but these are already the final designs.

20 But I like the saguaro cactus which is classic
21 Arizona. I like the one that says "vote," V-O-T-E.

22 CHAIRPERSON BUSCHING: With the flag or with
23 the people?

24 COMMISSIONER SCARAMAZZO: With the flag I
25 think.

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1 CHAIRPERSON BUSCHING: Okay.

2 COMMISSIONER SCARAMAZZO: Is that one you're
3 referring to, Carl?

4 COMMISSIONER KUNASEK: Yes. Yes, Gary.

5 COMMISSIONER SCARAMAZZO: Those are my two
6 choices also.

7 CHAIRPERSON BUSCHING: Okay. Commissioner
8 Jolley?

9 COMMISSIONER JOLLEY: My choices are the ones
10 with Sandra Day O'Connor and Abraham Lincoln and Martin
11 Luther King's picture on the "Vote." And the second
12 choice is the one with the flag that says "Vote."

13 CHAIRPERSON BUSCHING: And Commissioner Parker?

14 COMMISSIONER PARKER: My two were the saguaro
15 and the flag.

16 CHAIRPERSON BUSCHING: Okay. And I think my
17 two are the saguaro and the flag as well. So, would
18 someone like to make a motion?

19 COMMISSIONER SCARAMAZZO: So moved.

20 COMMISSIONER PARKER: I'll second.

21 CHAIRPERSON BUSCHING: I didn't hear --

22 COMMISSIONER SCARAMAZZO: Yes, I said: So
23 moved.

24 CHAIRPERSON BUSCHING: It's been moved by
25 Commissioner Scaramazzo and seconded by Commissioner

1 Parker that we use the "vote" with the flag and the one
2 with the saguaro. All in favor say, "aye."

3 (Chorus of ayes.)

4 CHAIRPERSON BUSCHING: Opposed, nay?

5 Chair votes aye. Motion carries.

6 And then we need to decide which one for the
7 general and which one for the primary election.

8 Someone want to make a motion? Commissioner
9 Parker?

10 COMMISSIONER PARKER: I move we use the "vote"
11 with the flag for the primary and the saguaro for the
12 general.

13 CHAIRPERSON BUSCHING: Is there a second?

14 COMMISSIONER KUNASEK: I will second that.

15 CHAIRPERSON BUSCHING: It's been moved by
16 Commissioner Parker and seconded by Commissioner Kunasek
17 that we use the "vote" with the flag for the primary
18 election and the saguaro one for the general election.
19 Any discussion?

20 If not, the Chair will call for the question,
21 all in favor say, "aye."

22 (Chorus of ayes.)

23 CHAIRPERSON BUSCHING: Opposed, nay?

24 Chair votes aye. Motion carries.

25 Anything else you need, Mr. Becker?

1 MR. BECKER: Nope. All set.

2 CHAIRPERSON BUSCHING: Okay. Great. Thank
3 you.

4 Item No. IV, decision to accept, reject or
5 modify recommendation of the administrative law judge in
6 MUR 04-0043, Peggy Toomey Hammann. Mr. Lang?

7 MR. LANG: Thank you, Madame Chair,
8 Commissioners. You have before you the final
9 administrative law judge's decision in the Hammann
10 matter. And as you noticed when you reviewed it, the
11 law judge found in agreement with the Commission on all
12 matters regarding violations of law. And so Monty Lee
13 of the Attorney General's Office is here to provide
14 advice to the Commission regarding the procedure, the
15 next steps in the procedures in this matter. And if you
16 have any questions regarding how the numbers were
17 reached, Diana Varela is here.

18 I should also mention that we sent the
19 appropriate notices out regarding this matter, giving
20 Ms. Hammann notice of this decision and it would be on
21 the agenda. As a courtesy, we called her on Monday
22 because as you know we've had continuing communication
23 problems with her. She indicated to us that she would
24 not be able to attend -- or, actually, she didn't say
25 that. She said that she was busy with family matters

1 and she would not be able to attend. And so just to let
2 you know that.

3 CHAIRPERSON BUSCHING: Okay.

4 COMMISSIONER KUNASEK: Todd?

5 MR. LANG: Yes.

6 COMMISSIONER KUNASEK: This is Carl. I guess I
7 should call myself "Kunasek," is that it?

8 MR. LANG: Whichever you prefer, Commissioner.

9 COMMISSIONER KUNASEK: I'm more relaxed with
10 Carl.

11 I noticed that she received a total of \$28,000
12 in support. Where did that \$28,000 go?

13 MR. LANG: You mean in public funding,
14 Commissioner?

15 COMMISSIONER KUNASEK: Yes, public funding.

16 MR. LANG: She spent it in her campaign.

17 COMMISSIONER KUNASEK: And she reported that
18 the way it should be have been reported throughout the
19 campaign?

20 MS. VARELA: Commissioner Kunasek, this is
21 Diana Varela. To the extent that the staff would have
22 looked at the reports for the violations alleged -- I
23 mean, what you have in front of you are the alleged
24 violations and kind of the culmination of that with the
25 ALJ decision.

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1 COMMISSIONER KUNASEK: Uh-huh.

2 MS. VARELA: I guess I'm trying to say, I don't
3 know if it would be appropriate to, sort of, revisit how
4 she spent the money. That's not -- that's not the issue
5 that's before the Commission.

6 COMMISSIONER KUNASEK: Okay. I understand
7 that.

8 MS. VARELA: Uh-huh.

9 COMMISSIONER KUNASEK: I just thought maybe she
10 had to report it all and then her expenditures were all
11 legal, or approved, or whatever. But that's due to my
12 lack of knowledge, I guess.

13 MS. VARELA: And -- and Commissioner Kunasek,
14 one of the things is that -- and one -- at least one of
15 the violations is based on the fact that she never did
16 file her post-primary report; so, in fact, she was not
17 in compliance with the Article 1 reporting requirements
18 as far as that goes. And as far as I know, she's never
19 filed that report. So she wasn't in compliance with
20 that. But -- but to the extent that we could document
21 violations, I think the ALJ's decision reflects those
22 findings.

23 COMMISSIONER KUNASEK: Okay. Well just for my
24 own curiosity, so we don't know if she spent it all on
25 legitimate purposes?

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1 MR. LANG: We have no indication otherwise,
2 Commissioner.

3 COMMISSIONER KUNASEK: Okay. Thank you.

4 CHAIRPERSON BUSCHING: Mr. Lee, would it be
5 appropriate to express in open session the history and
6 future of this situation?

7 MR. LEE: Good morning, Madame Chairman,
8 Members of the Commission. Again, for the record, I'll
9 just identify myself. My name is Montgomery Lee. I'm
10 an Assistant Attorney General. I am here as independent
11 advisor aside from the positions taken by Ms. Varela who
12 is, in essence, a prosecutor or an advocate before you.

13 The advice that I give is as an independent
14 advisor to make sure there's no improper influence
15 coming from your regular counsel.

16 And, Chairman, your question is, in open
17 session whether you should be able to look at kind of
18 these peripheral issues?

19 CHAIRPERSON BUSCHING: No. My question is,
20 could you just explain to the Commissioners and members
21 of the public the procedural background, where we are
22 now and what happens going forward based upon what kind
23 of decision we make.

24 MR. LEE: Certainly. Members of the
25 Commission, Madame Chairman, the administrative law

1 judge heard all of the evidence that was presented by
2 Ms. Varela and by Ms. Hammann at the time the hearing
3 was scheduled. A full record was made of those
4 proceeding and the administrative law judge prepared his
5 recommended findings, conclusions, and recommended
6 order.

7 After referring that to this Commission and
8 this body, the Commission's responsibility at this time
9 is to review the recommended decision by the
10 administrative law judge, determine whether to affirm
11 that as recommended in its totality, to modify in it in
12 sense, or reject it, or send it back to the
13 administrative law judge for further proceedings.

14 So really that is the procedure of how you are
15 -- where you are today. And the responsibility of the
16 Board at this time is simply to review that recommended
17 decision and order and either affirm it, modify it, or
18 reject it.

19 CHAIRPERSON BUSCHING: And if it is affirmed,
20 then what happens after that? And if it's modified and
21 if it's rejected?

22 MR. LEE: If the Commission affirms the
23 decision, there will be, in essence, a cover order, an
24 order indicating adoption of administrative law judge's
25 recommended findings, conclusions, and recommended

1 order. That will then become the final order of the
2 Commission. At that time, if Ms. Hammann believes that
3 there are any procedural or substantive errors in the
4 proceeding, she may file a rescission to rehear it or
5 seek review after she's exhausted her administrative
6 remedies.

7 If the Commission determines that it would like
8 to modify any part of the administrative law judge's
9 recommendations, any modification of the findings of
10 fact would have to be preceded by the Commission's
11 review of the entire record, including the transcript of
12 the proceeding in order to make modification of the
13 finding.

14 If you were to choose to modify the conclusions
15 or any part of the order, you could do so after simply
16 looking at the record. It would not require a full
17 review of the transcript. You would then make the
18 modification, issue an order indicating the modification
19 and any final order you would issue.

20 If you reject the order, then you simply send
21 it back to the administrative law judge for further
22 proceedings. And you may specify what additional
23 information you would like, whatever issues you would
24 like the administrative law judge to address in the
25 order rejecting the administrative law judge's findings.

1 If the Board chooses not to take any action at
2 all, in other words you simply table the matter, the
3 Office of Administrative Hearings will certify the
4 administrative law judge's recommendation as the final
5 order based on no action by the Commission.

6 CHAIRPERSON BUSCHING: Thank you. Are there
7 any questions of Mr. Lee?

8 Okay. Is there anyone from the public that
9 wishes to speak to this matter? I don't see anyone.

10 We'll turn to discussion by members of the
11 Commission. And, of course, if you want additional
12 legal advice, we can always vote to go into executive
13 session, but otherwise I'll entertain discussion or a
14 motion by members of the Commission.

15 COMMISSIONER JOLLEY: I have a question.

16 CHAIRPERSON BUSCHING: Commissioner Jolley?

17 COMMISSIONER JOLLEY: Yes. And -- well, my
18 question is for Diana Varela, the Deputy Attorney
19 General. Is this order then stating the amount of Ms.
20 Hammann's civil penalty will be \$2,787, that's what the
21 administrative law judge's statement is?

22 MS. VARELA: Is that for me or for you?

23 MR. LEE: I don't think it's an answer that
24 requires your advocate to answer. I've reviewed the
25 administrative law judge's recommended decision. That

1 is the amount that has been recommended as a civil
2 penalty.

3 COMMISSIONER JOLLEY: Okay. Thank you.

4 CHAIRPERSON BUSCHING: Commissioner -- or
5 Attorney General Varela.

6 MS. VARELA: Commissioner Busching and other
7 Members, and Mr. Lee, I don't know if this is
8 appropriate, just, I guess, as one of the parties I
9 would just request that the Commission adopt the
10 administrative law judge's decision in its totality.
11 And I have prepared a final order for the Commission's
12 review and consideration and I can give that to Mr. Lee.
13 And any legal advice that you would want on it would be
14 -- would come from him. But I can give that to him and
15 if he feels that's appropriate for the Commission to
16 consider it, you can do that. Thank you.

17 CHAIRPERSON BUSCHING: Commissioner Parker?

18 COMMISSIONER SCARAMAZZO: I do think -- if I
19 could for the moment -- Commissioner Scaramazzo -- I do
20 think it is appropriate also for us to mention that we
21 did have a settlement conference with Ms. Hammann to try
22 to resolve this matter and came up with an agreement and
23 then she failed to abide by the agreement. That's why
24 it's going the route it's now pursuing.

25 CHAIRPERSON BUSCHING: Thank you. Commissioner

1 Parker?

2 COMMISSIONER PARKER: With the difficulty we've
3 had being in contact with her, what is the procedure for
4 her to make these payments if, indeed, she is found to
5 have to make this \$2,700 restitution to the Commission?
6 Or how does that work?

7 MR. LEE: Members of the Commission, by
8 requiring the payment of a civil penalty, the entry of
9 this order would in essence become the equivalent, I
10 would say, of a civil judgment. If she fails to make
11 any payment of the civil penalty, you can attempt to by
12 informal means, letters or other communications, require
13 her to make the payment.

14 If she continues to fail to do so, the matter
15 can be turned over to the Attorney General's Office
16 Collection Section and they would then pursue the matter
17 as a collection issue. They would convert the order
18 into a judgment and attempt to enforce it against her.

19 COMMISSIONER PARKER: I see. Thank you.

20 CHAIRPERSON BUSCHING: Any other questions or
21 discussion?

22 MR. LEE: Madame Chairman, I have reviewed the
23 proposed formal order that Ms. Varela submitted. It
24 appears to be in proper form and I would recommend, if
25 that is the Board's -- excuse me, the Commission's

1 desire, that using it and adopting it will be fine.

2 CHAIRPERSON BUSCHING: Okay. Thank you. The
3 Chair will entertain a motion.

4 COMMISSIONER SCARAMAZZO: I would move that we
5 accept the administrative law judge's order and that we
6 pursue the civil penalty in the amount of \$2,787.78.

7 CHAIRPERSON BUSCHING: Is there a second?

8 COMMISSIONER KUNASEK: I will second that.
9 This is Commissioner Kunasek.

10 CHAIRPERSON BUSCHING: It's been moved by
11 Commissioner Scaramazzo and seconded by Commissioner
12 Kunasek that we accept the recommendation of the
13 administrative law judge and affirm his order and
14 collect the penalty. Any further discussion?

15 If not, the Chair will call for the question,
16 all in favor say, "aye."

17 (Chorus of ayes.)

18 CHAIRPERSON BUSCHING: Opposed, nay?

19 Chair votes aye. Motion carries.

20 The next item on the agenda is Item VI,
21 consideration and decision whether there is reason to
22 believe a violation occurred in MUR 06-0001, complaint
23 against Janet Napolitano. Mr. Lang?

24 MR. LANG: Thank you, Madame Chair,
25 Commissioners. I'm going to pass out a few documents.

1 First of all, does everyone have a participating
2 candidate guide with them? If not -- and I think you
3 all have copies of our manual, our rules manual.

4 Also I'm going to pass out something that we
5 don't need to look at right now, but this is a decision
6 the Commission reached in another case.

7 Commissioners, you have before you my statement
8 of reasons, you have the response by the Napolitano
9 Campaign written by Andy Gordon their attorney, and also
10 have some letters from the initial complaint from the
11 Arizona Republican Party and a follow-up letter that
12 they wrote.

13 Rather than go through all of that, would the
14 Commission like me to summarize the issues for them?

15 COMMISSIONER SCARAMAZZO: Please.

16 MR. LANG: Okay. The complaint was filed on
17 April 24th by Glenn Hammond, the Executive Director of
18 the Republican Party -- Arizona Republican Party.
19 Basically the complaint raised concerns regarding
20 whether or not the Napolitano Campaign spent money
21 before she was declared a candidate on e-mails and a
22 Website. We reviewed those documents. The Napolitano
23 Campaign acknowledges that the Website went up on March
24 1st and that they had a contractual obligation to pay
25 something for that site at that time.

1 So there's really two issues -- or two main
2 issues here. First, was there an expenditure and if so,
3 when? And if you look to the definition set forth at
4 16-901 Part 8 which says that, "Any purchase" and then
5 you move on, "in a contract, promise, or agreement to
6 make an expenditure resulting in the extension of credit
7 is an expenditure." And that's the key issue here.

8 In their response, the Napolitano Campaign
9 pointed out that the candidate guide provided an
10 exception regarding reoccurring expenditures. But,
11 before we get to that, I'd also point out some of the
12 other things that the candidate guide points out at page
13 59. If you look at page 59, it's marked in your books,
14 "Debt is incurred by a candidate when the promise,
15 contract, or agreement to make an expenditure occurs."
16 And then there's an example there, "When campaign signs
17 are ordered the campaign has incurred a debt." So when
18 there's an obligation we consider that to be debt. And
19 debt, of course, is an expenditure.

20 Also in the box on page 59, it says,
21 "Candidates may not make expenditures exceeding the
22 amount of monies in their campaign account." On page
23 61, if you turn there, it says, "The expenditures must
24 be reported when the goods or services are ordered even
25 if the invoice is received later." Again, we look at

1 the time of the order, the time that the debt occurred.

2 The Napolitano Campaign makes an interesting
3 argument regarding sort of a commercial view of the
4 definition of expenditure that because the extension of
5 credit didn't exist until later there was no
6 expenditure.

7 In my view and reason to believe, I indicated
8 to you the debt occurred on March 1st. That's when they
9 received the benefit, that's when the Website was up and
10 running, that's when there was an obligation to pay.
11 Under our rules and definitions, that's an expenditure.

12 The next issue is, well, okay, if it was -- if
13 it was an expenditure, well, then, it's still not a
14 problem because this was a reoccurring services
15 contract. First of all, in my view, the reoccurring
16 service contract wasn't in existence until the terms
17 were laid down on March 15 in the written contract.
18 But, if you agree with the Napolitano Campaign that it
19 could have existed earlier -- which is problematic
20 because then, arguably, if the contract with all its
21 term existed on March 1st, then all of its obligations
22 existed then too as well, which would be \$27,000 if the
23 Commission finds that it was a reoccurring services
24 contract.

25 My point is, I don't think it applies to the

1 issue of the e-mails and expenditures on March 1 through
2 March 14th, but that's up to the Commission to decide.
3 I think when you look -- when you look at my reason to
4 believe, ultimately, it comes down to a policy decision
5 as to whether this is a reoccurring services contract.
6 And I give you a number of policy concerns that I raise
7 which is, basically, you can receive something of great
8 value up front and then pay for it over time. And that
9 raises a number of concerns.

10 Here you have a Website that was of significant
11 value. The Napolitano Campaign have been completely
12 cooperative and explained the situation to me. And, I
13 certainly appreciated that. And they pointed out the
14 Website that you see now online was not nearly the same
15 as the one that was there on March 1st. The one on
16 March 1st was a micro site which is a much simpler
17 Website worth much less money. But still the issue
18 remains as to what it was worth and whether they had the
19 money on hand to pay for it.

20 There is some precedent regarding this issue.
21 In 2004 -- and I sent that settlement around for you to
22 look at it. In 2004 the Commission engaged in an
23 enforcement action with Senator Gould. In that case
24 Senator Gould had ordered phone banks and those phone
25 banks began on August 6th and they continued for

1 sometime thereafter for a few weeks and past the primary
2 into the general. He didn't pay for the phone banks
3 until after he received the invoice at the end of the
4 phone banks [sic]. But the Commission determined -- and
5 you see it in your summary there -- that the obligation
6 to pay occurred when the phone banks began on August
7 6th.

8 And that's directly applicable I think to the
9 situation here. The obligation occurred, I believe,
10 when the Website went up.

11 And so then the issue is, if there was an
12 expenditure on the 1st through the 14th, did the
13 Napolitano Campaign have enough money on hand? And
14 they've given me indications, well, certainly they had
15 over \$40,000 on the 15th. So the question is, did they
16 have enough money on hand throughout the time period
17 prior to that to pay for the benefits they received.

18 We don't know the answer to that. They
19 certainly provided credible evidence that they had a
20 significant amount of money on hand. What we don't know
21 is if that was enough.

22 And so if the Commission finds reason to
23 believe, I recommend examination and a field audit so we
24 can have the auditors take a look at this and determine
25 whether or not there was money on hand. I don't want to

1 mislead the Commission, it may well be that they had
2 enough money and there was no violation. We just don't
3 know that yet. So, that's why my recommendation is we
4 find reason to believe there may have been a violation.

5 CHAIRPERSON BUSCHING: Thank you. Any
6 questions for Mr. Lang?

7 COMMISSIONER KUNASEK: Mr. Lang, Carl Kunasek.
8 I have a question with regard to the e-mails that were
9 sent to state employees or government employees. The
10 question is twofold: The question of propriety for a
11 sitting executive at any level to send a subordinate an
12 e-mail soliciting funds or whatever was solicited. And
13 the second question is the propriety of using -- I
14 assume if they were sent to them at their place of work
15 -- state equipment. Has that been examined?

16 CHAIRPERSON BUSCHING: Mr. Kunasek, it strikes
17 me as those are legal advice questions, and if you want
18 legal advice, we should go into executive session. Is
19 that your pleasure or can you defer your question?

20 COMMISSIONER KUNASEK: Well, I don't -- I
21 didn't -- I didn't think it would require legal advice
22 because from my experience, an executive, whether he is
23 in private business or in government, should not solicit
24 something from a subordinate, number one.

25 Number two, from my experience you were not --

1 never supposed to use taxpayer purchased equipment for a
2 campaign. Now if that takes legal advice, so be it. I
3 don't think it does but that's your call.

4 CHAIRPERSON BUSCHING: Ms. Varela, would you --

5 MS. VARELA: I would prefer to answer those
6 questions in executive session. So, Commissioner
7 Kunasek, if you wouldn't mind, I suspect that there are
8 people here who want to speak to this matter and maybe
9 we can take care of everything in executive session if
10 the Commission is going to have other questions on this
11 matter, if that's okay.

12 COMMISSIONER KUNASEK: That's fine.

13 MS. VARELA: Okay. Thank you.

14 CHAIRPERSON BUSCHING: Any other questions of
15 Mr. Lang?

16 If not, I'll see if any member of the public
17 wishes to speak to this matter. As I mentioned before,
18 we're going to limit comments to 10 minutes a person
19 unless we have a rebuttal comment in which case it will
20 be five minutes. Sir?

21 MR. GORDON: Commissioner Busching, Andy Gordon
22 for the Napolitano Campaign and I would like to speak to
23 this.

24 CHAIRPERSON BUSCHING: Okay.

25 MR. GORDON: Madam Chair, Commissioners. As I

1 said, my name is Andy Gordon and I represent the
2 Napolitano Campaign in this matter.

3 First of all, I want to thank the Commission
4 for giving me this opportunity to address it. I also
5 want to thank Mr. Lang who has been very good to work
6 with in these early parts of this investigation.

7 Obviously, you have our prior response and
8 supplement and we believe that we have meticulously and
9 carefully followed the law and that there's no basis for
10 this investigation. As Mr. Lang says, there's really
11 two relatively simple questions to be addressed: Was
12 there a monthly reoccurring expense contract with the
13 Internet vendor on March 1st when the Website went up?
14 If the answer to that question is there was such a
15 reoccurring contract, that's the end of the inquiry
16 because there's no question that we had the money to pay
17 when the bill came due later in March.

18 Secondly, if there was not a reoccurring
19 expense, did we have money on hand on March 1st when we
20 put the Website up to cover the expense of the Website?
21 And as we sit here right now, we have indicated we had
22 that money and there's no basis to the contrary. We are
23 confident that even if the Commission votes today to
24 proceed with the investigation, the facts will show what
25 I've just said they'd show.

1 Let me be brief. I know you have this and I
2 want to leave a little time in case you have any
3 questions of me at this time. This is a regularly
4 reoccurring services contract. The Commission hasn't
5 challenged that for the time that the contract is
6 signed. The contract was signed on March 15th. The
7 question is whether it had to be signed before that
8 time.

9 As I assume the Commissioners know, the law
10 recognizes both oral and written contracts. Frankly, in
11 all fairness to candidates, if the Commission wishes to
12 promulgate a rule that services contracts have to be in
13 writing to be recognized as reoccurring expenses, then
14 the Commission should so say. There is no indication in
15 any of the rules or any of the materials put out by the
16 Commission that the contract has to be in writing.
17 Indeed it is very common in campaigns with employees and
18 consultants to work on a handshake deal or work out the
19 exact terms of the writing during the course of the
20 campaign.

21 Let me say something about the use of the word
22 "debt." You have been inundated with the statutory
23 definition of expenditure. What the Commission appears
24 to be hanging its hat on is that there was a debt
25 incurred. Nowhere in the statute defining expenditure,

1 or in the rules of the Commission, or in the statute in
2 Clean Elections that adopts the preexisting definition
3 of expenditure is the phrase "debt incurred" used.

4 The Commission cannot by rule create a
5 definition of expenditure that is contrary to that that
6 exists in the statute. You cannot bootstrap a violation
7 by saying a debt incurred constitutes an extension of
8 credit. And, quite frankly, I think that's what is
9 going on here.

10 Secondly, sufficient cash on hand. We've
11 provided Mr. Lang during the course of this
12 investigation with our records on when we received
13 money. On March 1st after we filed our papers, we
14 collected approximately \$3,600 in both 100 twenty-dollar
15 contributions and a loan from the candidate, and,
16 clearly, had that on hand.

17 As Todd has indicated, the Website that went up
18 that day was a very basic, what I'm learning the techies
19 call a micro site, which our consultants says had he
20 been asked to do that alone would have cost no more than
21 a thousand dollars to put up.

22 To the extent that there were e-mails that went
23 out after that, by March 15th we raised an additional
24 \$30,000. That works out to be about \$2,000 a day, I
25 believe. And at any given time we had more than

1 sufficient money to cover this.

2 What much of the Executive Director's report is
3 focused on is the difficulty that it will create for the
4 Commission in working matching funds if the definition
5 of expenditure is what we believe it is. I acknowledge
6 that this statute is not artfully drafted, but the
7 solution to that is not to punish a candidate who has
8 followed the rules or the statute because the Commission
9 or others may wish it was something else. The solution
10 is to fix the statute. You cannot use a punishment
11 proceeding to try and bring clarity to the -- to the
12 candidate. Frankly, it's just not fair.

13 In the Executive Director's report he talks I
14 at length when he talks about the so-called exception
15 for reoccurring expenses. It's not an exception, it's
16 not an expenditure. It's not an exception. The statute
17 on expenditures has below it a series of exceptions.
18 It's not an exception. It simply doesn't constitute a
19 contract for the extension of credit.

20 What the report says now is: Well, the
21 Commission recognize utilities and salaries as regularly
22 reoccurring expenses. This was not designed -- it was
23 designed to cover routine expenses not specifically or
24 directly associated with the production of identifiable
25 goods and services.

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1 And in that he goes on to delineate things such
2 as Websites. Well, if that was the Commission's view
3 that there would be one kind of good of reoccurring
4 expense and one kind of bad reoccurring expense, then
5 the Commission in all fairness to the candidates should
6 have pointed that out before.

7 As I said, I don't believe there's a factual
8 basis to go forward with the investigation. If the
9 Commission votes to do that, I'm quite confident that
10 the conclusion will be that there is no violation.

11 I think I'm still under 10 minutes, so if any
12 of the Commissioners have any questions, I'm more than
13 glad to answer.

14 CHAIRPERSON BUSCHING: Thank you. Are there
15 any Commissioners that have any questions of Mr. Gordon?

16 I don't hear any. Thank you, Mr. Gordon.

17 MR. GORDON: Thank you, Madame Chair, for
18 letting me address the Commission. I appreciate it.

19 CHAIRPERSON BUSCHING: Is there anyone else
20 from the public that wishes to speak to this matter?

21 I don't see anyone, so we'll turn to the
22 Commission. Mr. Lang, do you have anything that you
23 wish to say before the Commission begins its
24 deliberations?

25 MR. LANG: Thank you, Madame Chair, no. I

1 continue with my recommendation that we -- that we find
2 reason to believe there may have been a violation and
3 look into it further.

4 CHAIRPERSON BUSCHING: Okay. Thank you.

5 All right, we'll turn now to
6 deliberations by members of the Commission. Anyone have
7 any comments or thoughts? Or, if not, we'll entertain a
8 motion. Commissioner Jolley?

9 COMMISSIONER JOLLEY: Well, I have a comment
10 and I just want to make a statement on the technological
11 side of the Web development. There are many programs
12 that have been out on the market since 2004, and these
13 are for Windows XP and the Mac program -- or the Mac
14 computers. And these programs such as the Flash MX
15 Professional 2004 is a macro media animation design
16 which requires very little programming and has a very
17 improved video import wizard and capabilities such as
18 editing and spell check. And you can purchase these
19 programs on a Website called Amazon.com.

20 So, if someone had some type of computer savvy
21 or computer literate, they could actually design their
22 Website and sell it to anyone else for a minimal cost.
23 That's all I have to say.

24 CHAIRPERSON BUSCHING: Thank you. Any other
25 questions or comments by members of the Commission?

1 Commissioner Parker?

2 COMMISSIONER PARKER: I've got a question and
3 maybe Ms. Varela can answer it. It's, aren't electronic
4 media considered to have the same weight as the paper
5 document in terms of public record and things like that?

6 MS. VARELA: I don't know the answer to that
7 question.

8 COMMISSIONER PARKER: Because to me, the
9 Website is like it would be like a blanket paper
10 brochure sent out to everybody. And as they update it,
11 it would be like you sending out a new brochure to
12 people. So, I don't understand why they can view that
13 as a reoccurring expenditure when it's almost like it's
14 sending out a new piece of campaign literature every
15 time you add something to your Website.

16 Like the old adage, when you put up your
17 campaign signs after a couple weeks you go put the snipe
18 on the corner to reorient people to look at your signs a
19 second time. And to me the Website is -- is like the
20 eternal floating brochure in the sense of, you know, you
21 want to update it so people will come back and keep
22 looking at your site to see what's new. And to me
23 that's no different than sending out a new brochure
24 either on different color paper or using different
25 photos or whatever to get people to vote for you.

1 So I -- to me I have a hard time accepting this
2 as a reoccurring expenditure. To me it would be
3 something new each time because you're -- you're
4 changing what's there to entice the people to vote for
5 you. And you're just using electronic brochures versus
6 paper brochures in a sense.

7 And so, I guess, that's where my question comes
8 in in terms of what its worth is. Because in a sense
9 you could say that this basic -- what do you call it
10 micro --

11 MS. VARELA: Micro site.

12 COMMISSIONER PARKER: -- micro media or
13 whatever -- Website -- to me it had the effect of a
14 paper brochure that would have been mailed to everybody
15 in the state of Arizona in a sense because everybody
16 would have the ability to access the Website. In a
17 sense she was trying to broadcast her Website to as
18 broad a population as possible.

19 So, I have a hard time viewing that as a minor
20 expenditure and also as a reoccurring expenditure. So,
21 I don't -- I don't know what the answer is or where we
22 proceed from that, but that's the difficulty I have with
23 the situation.

24 CHAIRPERSON BUSCHING: And do you have a legal
25 question in that context that you want to ask? And, if

1 so, do you want to --

2 COMMISSIONER PARKER: Well, I guess my legal
3 question would be, you know, would this electronic
4 medium be equivalent to a paper document per se in terms
5 of, you know -- if she had sent out paper brochures
6 would we be looking at it in the same light as we are
7 looking at it in an electronic medium?

8 Did that make sense?

9 MS. VARELA: No, I understand. And as I
10 usually do, I would advise that if you want legal advice
11 we go into executive session.

12 COMMISSIONER PARKER: At some point I say we do
13 that when it's appropriate.

14 CHAIRPERSON BUSCHING: Then you can make a
15 motion.

16 COMMISSIONER PARKER: I so move.

17 CHAIRPERSON BUSCHING: Is there a second?

18 COMMISSIONER JOLLEY: I'll second that.

19 CHAIRPERSON BUSCHING: It's been moved by
20 Commissioner Parker and seconded by Commissioner Jolley
21 that we go into executive session for obtaining legal
22 advice. I want to indicate that minutes of and
23 discussions made at an executive session are
24 confidential pursuant to ARS Section 38-431.03(B) and
25 shall not be released to anyone unless specifically

1 authorized by law.

2 And in executive session we must ask all of the
3 members of the public to leave the room while we obtain
4 legal advice. Thank you.

5
6 (Whereupon the public retires from the meeting
7 room.)

8
9 (Whereupon the Commission is in executive
10 session from 10:19 a.m. until 10:41 a.m.)

11
12 (Whereupon all members of the public are
13 present and the Commission resumes in general session.)

14
15 CHAIRPERSON BUSCHING: We will resume the
16 regular session of the Citizens Clean Elections
17 Commission today, Thursday, May 25th. We went into
18 executive session to obtain legal advice with respect to
19 Agenda Item No. VI. And now we have obtained that legal
20 advice so we will continue with discussion among the
21 Commissioners.

22 Is there any other questions or discussion that
23 the Commissioners want to do?

24 COMMISSIONER KUNASEK: Todd, Commissioner
25 Kunasek, your recommendation is to investigate whether

1 or not there has been a violation of statute or rule in
2 this matter?

3 MR. LANG: That's correct, Commissioner.

4 COMMISSIONER KUNASEK: Correct. All right.
5 Thank you.

6 CHAIRPERSON BUSCHING: Any other discussion or
7 questions? If not, the Chair will entertain a motion.

8 COMMISSIONER KUNASEK: I would move to accept
9 the recommendation of the Executive Director.

10 COMMISSIONER SCARAMAZZO: I would second that.

11 CHAIRPERSON BUSCHING: It's been moved by
12 Commissioner Kunasek and seconded by Commissioner
13 Scaramazzo that we accept the recommendation of the
14 Executive Director and find reason to believe in the
15 Janet Napolitano matter.

16 Any further discussion? If not, the Chair will
17 call for the question, all in favor say, "aye."

18 (Chorus of ayes.)

19 CHAIRPERSON BUSCHING: Opposed, nay?

20 COMMISSIONER JOLLEY: Nay.

21 CHAIRPERSON BUSCHING: The Chair votes aye.
22 The motion carries.

23 The next item on the agenda is Item No. VII,
24 discussion and possible action on MUR 04-0079 Rick
25 Murphy, probable cause recommendation. If approved,

1 consideration and designation of Citizens Clean
2 Elections Commission representative for possible
3 informal settlement conference. Mr. Lang?

4 MR. LANG: Thank you, Madame Chair,
5 Commissioners. This matter has been going on for some
6 time. This involves Representative Murphy. As you
7 know, we already found reason to believe there may have
8 been a violation and now I'm recommending that the
9 Commission find probable cause.

10 Very briefly, you have a number of documents in
11 there. It's the tabbed file. You have both the current
12 matter which is MUR 04-0079 and the documents that are
13 relevant to that, and you also have for background
14 information and detail the prior matter which is MUR
15 04-0029. The bottom line is Representative Murphy wrote
16 nine checks to a consultant totaling over \$20,000 which
17 is approximately two-thirds of his total participating
18 candidate funding. And those -- there was no detail
19 provided in his campaign finance reports regarding the
20 use of subvendors. Rather, it was just indication that
21 the various expenditures were for signs, mailing, and
22 automated calls.

23 The law under 16-948(C) requires direct payment
24 to the vendor. So either Representative Murphy needed
25 to pay the subvendor directly -- like the sign company

1 or whatever have you -- or needed to sign a campaign
2 finance report which provided that detail. This view of
3 the law was upheld in prior Commission matters in the
4 Smith case and so here we are.

5 Representative Murphy raises a number of
6 procedural concerns that really are inapplicable here.
7 The concerns he raises regarding the prior matter are
8 simply not relevant here. The detail is useful but the
9 concerns he raises isn't --isn't relevant here.

10 And the policy here, of course, is that detail
11 is important. This is public money, and to ensure that
12 the money is actually spent on the candidate's campaign,
13 who received the money and it's spent appropriately, and
14 not put into some other campaign or some other purpose,
15 we need that detail. And 16-948(C) permits it as upheld
16 by the ALJ in the Smith case.

17 I'll not get into all the other details unless
18 the Commission has questions, but it really comes down
19 to something that simple. The penalty under 16-942(B)
20 is \$110 per day that he fails to report. Of course, it
21 has been over a year so that number is astronomical.
22 Under our rules we limit that under rule R2-20-222, we
23 limit that penalty to \$10,000.

24 So, I'm recommending that the Commission find
25 probable cause that Representative Murphy violated the

1 requirements of 16-948(C) by failing to either pay
2 directly to the subvendors or providing that detail in
3 his report and penalize him \$10,000.

4 CHAIRPERSON BUSCHING: Thank you. Are there
5 questions for Mr. Lang? If not -- Commissioner Parker?

6 COMMISSIONER PARKER: This all happened before
7 my tenure and I guess my question is, how would a
8 candidate know who their -- their --

9 MR. LANG: Subvendor?

10 COMMISSIONER PARKER: -- who the subvendors
11 were? You know, when he was paying a check to ABC
12 Company for managing his campaign, how would he know
13 that they did go out and indeed use a third party to
14 prepare signs, or prepare bumper stickers, or whatever
15 the case may be and what the amounts of those
16 expenditures individually would have been? Because he
17 would have just written a lump-sum check to the campaign
18 guy, and for all he knew, the guy was doing it himself
19 or whatever.

20 I'm just saying, how would he know who the
21 vendors are. Because a lot of time vendors don't want
22 to necessarily say what candidates they're doing things
23 for because if they're doing three or four candidates
24 and two candidates running in the same race or
25 something, that could cause a problem or whatever. So,

1 I guess my question is, how would he be expected to
2 report an individual billing for signs or brochures or
3 whatever in that regard?

4 MR. LANG: Well, Commissioner Parker, and
5 Commissioners, what we found is in numerous other
6 campaigns they were able to get that information simply
7 by asking. I do acknowledge that initially the
8 subvendor in this case was reluctant to provide the
9 information in enforcement matters involving other
10 candidates, but ultimately he did provide the
11 information.

12 So I guess my point would be, he would simply
13 need to ask. It's simply not been a problem, in our
14 experience, getting that information.

15 Ultimately, the subvendor information is
16 troubling to the vendor -- some vendors because, you
17 know, they don't want to disclose all that information,
18 how much money they paid and that sort of thing.
19 Ultimately, if you're going to accept public money, that
20 kind of information is necessary. And so that's why
21 we're covering it.

22 COMMISSIONER PARKER: In the other cases where
23 you mentioned the same subvendor or same guy used the
24 same subvendors for other candidates that you talked
25 with?

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1 MR. LANG: Uh-huh.

2 COMMISSIONER PARKER: So you're saying that he
3 needs to provide you the same information that these
4 other candidates have?

5 MR. LANG: In fact, Commissioner,
6 Commissioners, we offered to settle this case by closing
7 without any sort of penalty or admission wrongdoing if
8 he simply provided that subvendor information. As a
9 matter of principal, and of course he'll speak, he's
10 quite convinced that we're acting inappropriately. But
11 we were willing to settle this with no penalty.

12 CHAIRPERSON BUSCHING: Other questions by
13 Commissioners?

14 COMMISSIONER PARKER: I have another question.

15 CHAIRPERSON BUSCHING: Commissioner Parker?

16 COMMISSIONER PARKER: What does it mean to be
17 dismissed without prejudice and why did the Commission
18 choose that?

19 MR. LANG: I think that's appropriate for Ms.
20 Varela.

21 COMMISSIONER PARKER: Is that okay to ask in
22 open session?

23 MS. VARELA: I would advise going into
24 executive session. Well, I can answer what dismissed
25 without prejudice means.

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1 COMMISSIONER PARKER: Okay.

2 MS. VARELA: It means that a -- that a
3 complaint that's been filed, it's been dismissed without
4 prejudice means it can be refiled either by the same
5 person or somebody else. Something that's been
6 dismissed with prejudice -- I'm speaking generally --
7 that matter cannot be raised again.

8 COMMISSIONER PARKER: Okay.

9 CHAIRPERSON BUSCHING: Dealing with that
10 violation and that circumstance?

11 MS. VARELA: Right. And I guess, really, as to
12 why the Commission did it, that was the Commission's
13 vote.

14 COMMISSIONER PARKER: Okay. I've been looking
15 at my notes I made here.

16 Okay. That's fine.

17 CHAIRPERSON BUSCHING: Okay. Any other
18 questions by members of the Commission? If not, I'll
19 open it up for any comments by members of the public.
20 As indicated earlier today, comments from public are
21 limited to 10 minutes. And if after further discussion
22 there's a rebuttal, then that will be limited to five
23 minutes.

24 Is there anyone from the public that wishes to
25 speak today?

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1 MR. MURPHY: Madame Chair, Rick Murphy. I
2 would like to speak.

3 CHAIRPERSON BUSCHING: Okay.

4 MR. MURPHY: Thank you, Madame Chair and
5 Commissioners. Mr. Lang eluded to the concerns that I
6 had raised that this is not even a proper matter for
7 enforcement by the Commission because of the fact of the
8 matter that the Commission has changed the rules in
9 midstream without using its rule-making process, without
10 going through the voter protected and
11 statutorily-mandated process of using the rule-making
12 process.

13 COMMISSIONER KUNASEK: Point of order. This is
14 Commissioner Kunasek. I did not get the name of the
15 person speaking.

16 MR. MURPHY: Representative Rick Murphy, sir.

17 COMMISSIONER KUNASEK: Thank you.

18 MR. MURPHY: Mr. Lang has essentially stated
19 here -- although he didn't say so explicitly and he has
20 done so in our conversations -- he believes enforcing in
21 that particular statute, 16-948(C) in this particular
22 manner, has been required all along. As we know, the
23 statute has not changed since it was passed by the
24 voters.

25 But the Commission's prior decisions in regard

1 to this statute do not agree with that. As little as a
2 year ago, a little over a year ago, enforcement matters
3 were filed against Governor Napolitano, Attorney General
4 Goddard, and former Secretary of State Betsy Bayless for
5 doing an even more general reporting than I did. My
6 reporting was specific. It was that I wrote, as he
7 said, nine checks and they were very specific for signs,
8 mailers, different things like that. And I even
9 provided immediately upon request to the Commission the
10 actual invoices for those particular items that
11 specified to the penny how much was for this particular
12 mailer on this particular date and how many mailers went
13 out and how many signs were bought on what particular
14 date and what kind of signs they were.

15 So that level of detail as far as what the
16 money was spent for had been reported all along. The
17 only question of this matter is the level of detail as
18 to the subvendor. Now, without getting into the
19 semantical argument of, well, where does this stop, if I
20 go buy a Coke at Wal-Mart, that's actually bottled by
21 Kalil or somebody else and Wal-Mart is a reseller,
22 they're subvendor -- or, Kalil is actually a subvendor.
23 How far down the line do we have to go?

24 Okay. The person I used to purchase signs, to
25 purchase mailers is a small business person. He's

1 conducting a small business doing election-related work.
2 He sold me signs. He sold me a mailer. I have no way
3 of knowing who he's using to bring all of that together.
4 For all I know, he had it printed one place and mailed
5 from a different place. Or maybe it was the same place.
6 I don't even know and I don't even care.

7 I care about how many mailers I get for a
8 particular price and whether or not that's reasonable
9 compared to what I know I can get it from somewhere
10 else. He's the vendor I choose to use. And arbitrarily
11 deciding he's a consultant, after the fact, without any
12 prior notice to me that he's considered a consultant as
13 opposed to a vendor, is completely out of bounds and
14 it's really trying to apply this in a retroactive
15 fashion.

16 Secondly, when it comes to Napolitano and
17 those other cases, they literally wrote hundreds of
18 thousands of dollars at a time in lump-sum checks that
19 went for who knows what. Those complaints were filed,
20 the Commission dismissed those complaints without taking
21 any action whatsoever or requiring any further detail.

22 CHAIRPERSON BUSCHING: Was that in the 2004
23 campaign?

24 MR. MURPHY: No, it was in the 2002 campaign.
25 And the ostensible reason was those were too old. The

1 fact of the matter is, the Commission requires records
2 be kept for three years. In the absence of an explicit
3 statute of limitations, that is a de facto statute of
4 limitations, and therefore all of those matters in those
5 complaints were well within that three-year time period
6 and should have been investigated to the same level and
7 to the same extent as mine. And by not doing so, the
8 Commission is playing favorites and is not applying this
9 particular interpretation in an even-handed fashion.

10 Now, as to proper notice. That is the specific
11 requirement. In Mr. Lemon's statements that he wrote,
12 he said that that information had been communicated to
13 me by a letter. Let me state explicitly, I did not ever
14 receive any such letter. I was aware of no such
15 requirement or I would have complied with it. And the
16 fact of the matter is, most other candidates were not
17 aware of any other such requirement, that's why the vast
18 majority of them didn't initially report that way.

19 There have been dozens and dozens of cases
20 where people have gone back because they weren't willing
21 to go through the fight, and amend it -- or because they
22 didn't have to fight for the information with their
23 vendor, and amended their reports with or without an
24 enforcement action. The list of the enforcement actions
25 you see covering this issue is barely half of the

1 candidates. And, some of those candidates even to this
2 day have not been contacted by the Commission and have
3 not been required to submit that detail and have not
4 submitted this detail.

5 This has not been applied in any even-handed
6 fashion whatsoever. Furthermore, when it comes to the
7 letter, even if that is legally sufficient notice --
8 which it is not -- according to the documentation that
9 has been discussed repeatedly, a letter was sent to all
10 candidates on July 9th, 2004. A letter which I never
11 got. As of May 2005, the letter was not in my file when
12 my attorneys looked at it. All of a sudden in June, at
13 the June 23rd Commission meeting, Paula Ortiz during
14 this Commission meeting -- I listened to the tape, it's
15 documented -- she went and retrieved my file. She
16 claimed that she, quote, unquote, "found the letter sent
17 to Mr. Murphy dated June 18th of 2004."

18 Wait a minute. We had just been discussing a
19 letter dated July 9th of 2004. Which is it? When Mr.
20 Gorseigner was asked about this -- he was the acting
21 director at the time -- he said as to whether or not
22 every candidate was sent this letter, he stated, quote,
23 unquote, "On this one, I simply can't answer the
24 question."

25 He cannot answer who was sent the letter, when

1 they were sent the letter, or whether everyone was sent
2 the letter. There was no constructive notice of this
3 requirement and it did not meet the legal requirements
4 of the notice. No rule was enacted. No substantive
5 policy statement was made. The statute wasn't changed.
6 And, yet, it was being implemented in the middle of a
7 cycle in a different way than it had been implemented in
8 the past. That is completely out of bounds.

9 As to Commissioner Parker's question about why
10 it was dismissed. With all due respect, Ms. Varela, I
11 take exception with your statement that that has to be
12 discussed in executive session. I asked during public
13 comment in the September meeting when this case was
14 originally dismissed what the reason was. I said I
15 deserve a reason and the public deserves a reason. I
16 was told by Commissioner Busching that I would get an
17 explanation. She directed you to give me an
18 explanation.

19 After the meeting you refused to speak with me.
20 My attorney contacted you several times asking for that
21 explanation. I never got it. He never got it. The
22 only explanation given was that it was protected by
23 attorney/client privilege.

24 Well, no, ma'am, it was not. That privilege
25 was waived in open session on the record and I demand

1 that explanation. I believe I know what the explanation
2 is. I believe the legal advice that the Commission was
3 given at that time was that you were likely to lose at
4 the ALJ hearing -- which I wanted to proceed with by the
5 way -- and, secondly, that jeopardy would attach if you
6 lost there.

7 And that was the reason that the case was
8 dismissed, so that I could be continually harassed by
9 it, so it could be brought back from scratch after tens
10 of thousands of dollars were expended to defend me and
11 tens of thousands of dollars probably in resources were
12 expended by the Commission to prosecute the case. And
13 now the public's money has been squandered by starting
14 this case all over again from scratch. Not to mention
15 the fact that now because my resources have been used
16 up, I've been deprived of counsel. That is an abhorrent
17 action on the part of a government agency. The citizens
18 of this state deserve better and I deserve better. It
19 is completely out of bounds.

20 And as far as biased on the part of the
21 Commission is concerned, I think that that is on the
22 record as well. During the June 23rd meeting when
23 Chairman Busching made her statement when she voted, she
24 said that I was tarred by the people I associated with
25 in the choice of my campaign consultant or vendor,

1 whichever you want to call him. How in the world could
2 I have had prior notice that he was considered someone
3 with whom I would be tarred to associate with in order
4 to avoid it?

5 That is a partisan political statement and it
6 was made purely on the basis of bias. And it shows bias
7 in the way this case was handled and in the way this
8 case was voted. It's on the record. It's indisputable.
9 To sit here and say that I'm tarred by the people I
10 associate with and that's the reason you going to vote
11 to fine me \$10,000 is unconscionable. Guilt by
12 association is not a legally-acceptable standard.

13 Either I violated a pre-existing law as
14 originally and previously interpreted or I did not. And
15 the fact of the matter is, I did not. And there is
16 overwhelming evidence that the Commission changed its
17 interpretation, changed the rules in midstream, and did
18 so retroactively.

19 CHAIRPERSON BUSCHING: Mr. Murphy --

20 MR. MURPHY: There was no proper notice given.

21 CHAIRPERSON BUSCHING: -- your time is up.

22 Thank you.

23 MR. MURPHY: Thank you. I'll be happy to
24 answer any questions if anybody has any.

25 CHAIRPERSON BUSCHING: Are there questions of

1 Mr. Murphy? Commissioner Parker?

2 COMMISSIONER PARKER: Being the new girl on the
3 block, I don't know if this could even happen or not.
4 Is it possible for us at this point to send this to an
5 ALJ? Is that within our purview?

6 MR. LANG: Commissioners, may I respond?

7 CHAIRPERSON BUSCHING: Please.

8 MR. LANG: If the Commission -- if the
9 Commission finds that there was a violation, then he'll
10 be given -- Representative Murphy will be given notice
11 of that will be given his appeal rights which will
12 include an opportunity to appeal to the ALJ. That is
13 the next step if the Commission finds a violation.

14 CHAIRPERSON BUSCHING: And that will be a full
15 hearing with all of the evidence, it won't just be the
16 ALJ reading what has transpired here.

17 COMMISSIONER PARKER: Well, Mr. Murphy, had
18 made a comment that he had wanted to go to an ALJ
19 previously and it didn't happen. And I don't understand
20 how -- what the --

21 MR. MURPHY: I was denied that opportunity
22 because the Commission, without my blessing, without
23 even consulting me, dismissed the matter without
24 prejudice in order to start it from scratch again. I
25 could have had this hearing last September the way I

1 wanted to. Now, almost a whole another year will have
2 been wasted of my time and of my efforts.

3 I could have had the hearing that I wanted
4 then. Now I don't have the resources for legal counsel
5 anymore. They've been used up. I've been deprived of
6 my right to due process by this Commission and by its
7 actions.

8 COMMISSIONER PARKER: Okay. Mr. Murphy, have
9 you been able to obtain the subvendor's list that was
10 asked for?

11 MR. MURPHY: At this point, as a matter of
12 principal, I have decided that I don't even care
13 anymore. I have been abused by this Commission so badly
14 and I believe -- and I did believe even at the time --
15 though I tried to cooperate, though I tried to get that
16 information and was not able to for months, I still
17 believe at that time it was not legally required because
18 the Commission was changing its interpretation of the
19 statute without going through the rule-making process
20 and that is not an acceptable way of doing business
21 under the law.

22 And so I have chosen to go ahead and fight it
23 as a matter of principal at this point. I have been
24 provoked beyond any willingness to cooperate with
25 something that should not even be happening.

1 CHAIRPERSON BUSCHING: Mr. Murphy, are you
2 saying that you are still unable to get the information?

3 MR. MURPHY: Madame Chair, I'm saying I have
4 not even attempted any longer to get the information and
5 I really don't care if I get the information. I,
6 honestly, don't know the answer.

7 CHAIRPERSON BUSCHING: Okay. Are there other
8 questions of Mr. Murphy? If not, thank you.

9 Is there anyone else from the public that
10 wishes to speak to this matter? If not, we'll turn to
11 comment --

12 MR. GUTIER: Commissioner, for the record,
13 Alberto Gutier, former participating candidate. Just
14 like to bring out to your attention real quick, page 61
15 of the current 2005/2006 book that talks about
16 expenditure. You guys didn't bother to change the way
17 it's written to reflect this particular ruling that came
18 out in June/July of 2004. So we should --

19 COMMISSIONER PARKER: Can you specify where
20 you're looking at?

21 MR. GUTIER: Page 61.

22 CHAIRPERSON BUSCHING: The little box?

23 MR. GUTIER: Little box. And also starts on
24 page 58 about the all the different information about
25 the campaign expenditures.

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1 CHAIRPERSON BUSCHING: Okay.

2 MR. GUTIER: This should have been corrected
3 here on this manual for the current cycle.

4 MS. VARELA: Yeah, if I can just point out, I'm
5 not sure what it is that you're referring to, but there
6 was a substantive policy statement number 15 that was
7 adopted September 14th, 2005 that specifically addresses
8 the use of campaign consultant and contractors as part
9 of the substantive policy statement. It would be
10 something the candidate would be given. It's in the
11 act, statutes, and rules. So it is provided --

12 MR. GUTIER: It maybe should be given to the
13 participating candidate's 2005/2006 participating
14 candidate guide. If it's something so critical to raise
15 a case against the candidate, shouldn't that also be
16 here as part of notes to be given to somebody. So
17 nobody makes that violation. Not only in the rules but
18 also in the manual. This is the Bible that most every
19 candidate followed. And it was a different one for
20 2003-4 and different for 05/06. That should have been
21 corrected here.

22 CHAIRPERSON BUSCHING: Thank you, sir.

23 Is there anyone else from the public that
24 wishes to speak to this matter?

25 Okay. Commissioner Parker?

1 COMMISSIONER PARKER: There was a question
2 brought up between when is a person a vendor and when a
3 person is a consultant. Is there a definition in either
4 here or in statute or whatever that speaks to that?

5 MS. VARELA: I don't believe so.

6 MR. LANG: Not that I know of.

7 COMMISSIONER PARKER: How does the Commission
8 determine if a person is a vendor or a consultant? I
9 know that was brought up in one of his comments, so I
10 didn't know how we determined that.

11 CHAIRPERSON BUSCHING: Mr. Lang, would you like
12 to respond?

13 MR. LANG: Madame Chair, Commissioner Parker
14 and Commissioners, it's really not a relevant inquiry in
15 terms of determination of whether or not 16-948(C) was
16 violated. Regardless of the title you use, and I think
17 the person in question now has a new title that he's
18 given himself, it really doesn't matter. What matters
19 is, is the candidate paying directly for the services
20 provided regardless of what you title that person? And
21 if not, are they providing the detail as to how the
22 subvendors were paid, or subcontractors, or consultants,
23 whatever you want to call them?

24 So, what really matters under 948(C) is how do
25 we get the detail, not the semantics of what you title

1 folks.

2 COMMISSIONER PARKER: Okay.

3 CHAIRPERSON BUSCHING: Mr. Lang, I have a
4 question. Mr. Murphy referred to dozens and dozens of
5 cases where this situation was applicable. Did we have
6 dozens and dozens of cases?

7 MR. LANG: In 2004, Madame Chair,
8 Commissioners, there were quite a few cases regarding
9 948(C). And in all those cases -- we are talking about
10 over a dozen. In all the cases where there wasn't the
11 sufficient detail, the candidates either provided the
12 detail or amended the reports to show the detail.
13 Representative Murphy is the lone holdout.

14 I would say that, you know, this is an
15 interpretation of 16-948(C) that came up. The reason we
16 sent out the letter is we realized there was an issue
17 that folks weren't providing the detail and we sent out
18 that letter. It wasn't a change in policy or rule it
19 was just an issue that hadn't come up. It happens from
20 time to time. In fact, the reoccurring issue in the
21 Napolitano, matter that hasn't been an issue for
22 enforcement before. It wasn't a change in rules, we
23 didn't need a rule change, it was simply a requirement
24 of 948(C). As -- I'll leave it at that.

25 CHAIRPERSON BUSCHING: Do you have other

1 comments or responses to Mr. Murphy?

2 MR. LANG: The only other thing I would
3 mention, in his -- in his letter he pointed out that we
4 didn't do an enforcement action against Representative
5 Ted Carpenter despite what he felt was a similar
6 circumstance, paying \$27,000 to a vendor who then used
7 subvendors.

8 We contacted Ivernes (phonetic) which was the
9 subvendor and they confirmed to us that whenever they
10 use subvendors they required Representative Carpenter to
11 directly contract with them. So that issue wasn't here.
12 They did it the way we require, they either provided the
13 detail or in their case they didn't do that, they had
14 the contract directly with the subvendor. And that
15 large payment for Ivernes is for consulting service and
16 not subvendor.

17 The other thing is, it was unfortunate he
18 didn't get a copy of the letter in his file and said it
19 showed up later. The problem was his attorney asked for
20 the enforcement file and letter was in the candidate
21 file where it was placed with everyone. That's a shame.
22 And, obviously, we regret that but that's how that came
23 about.

24 CHAIRPERSON BUSCHING: Mr. Lang, as part of the
25 materials we received today, did you happen to include

1 the invoices that Mr. Murphy was referring to?

2 MR. LANG: Not that I know of.

3 CHAIRPERSON BUSCHING: Do you have them?

4 MR. LANG: I don't have his enforcement file
5 with me.

6 CHAIRPERSON BUSCHING: I would like to know
7 what detail is on those invoices. I mean our experience
8 with other candidates had been that there was
9 essentially no detail, but Mr. Murphy seemed to indicate
10 or I heard him indicate that, in fact, his invoices did
11 have detail. And so I'd like to understand if, in fact,
12 his invoices did differ from other candidates.

13 MR. MURPHY: Madame Chair, if I may as a point
14 of clarification?

15 CHAIRPERSON BUSCHING: Sure.

16 MR. MURPHY: Representative Murphy again for
17 the record. Those e-mails -- invoices were e-mailed to
18 Colleen Connor upon her request in either late August or
19 early September of 2004, so they should be in whatever
20 files you have.

21 CHAIRPERSON BUSCHING: Okay. Yeah. And I
22 think staff has gone to get them, so --

23 MR. LANG: And, again, this is my
24 understanding, but Representative Murphy is here to
25 correct me if I'm wrong, my understanding is those

1 invoices were from the sub -- were from the consultant,
2 Mr. Querard, to Representative Murphy and not from the
3 subvendors. But they were an indication as to how much
4 Representative Murphy paid for each of those to Mr.
5 Querard but not an indication to how much Mr. Querard
6 paid to each of the subvendors.

7 CHAIRPERSON BUSCHING: So they were a
8 combination of consulting and actual -- consulting
9 services and actual products like signs and things like
10 that?

11 MR. MURPHY: No, ma'am. No, Madame Chair. At
12 no time did I pay Mr. Querard for consulting services.
13 I decided the course of my campaign and what my strategy
14 would be and I simply contracted with him for actual
15 items: Signs, mailers, et cetera. I did not receive
16 consulting services nor pay for consulting services at
17 any time.

18 CHAIRPERSON BUSCHING: Okay. Thank you.

19 MR. LANG: And so I stand by my -- my
20 understanding which is that these are indications of how
21 much Representative Murphy paid Mr. Querard, not how
22 much Querard paid the subvendor.

23 CHAIRPERSON BUSCHING: Okay.

24 MR. LANG: Which is what we require.

25 CHAIRPERSON BUSCHING: Thank you. Other

1 questions of Mr. Lang or other discussion while we wait
2 for staff to see if they can find the invoices?
3 Commissioner Jolley?

4 COMMISSIONER JOLLEY: Yes. I just have a
5 comment on Agenda Item No. IV which was dated, I
6 believe, February 5th, 2005 -- or February 7th, 2005.
7 Mr. Lemon was the investigative consultant and in Item
8 B, he says:

9 "Payment directed to persons providing goods or
10 services: Respondent Murphy's campaign finance report
11 shows expenditures to Constantine Querard for
12 \$20,556.37. It is a description of mailing, signs, or
13 automated calls.

14 "Exhibit C, Murphy campaign finance report.
15 The Respondent failed to directly pay or identify on the
16 campaign finance report the person who provided the
17 goods or services for the postage used for the mailing,
18 printed or printing the mailing, and graphic designer
19 who created the mailing."

20 And he goes on to say, "Therefore, there is
21 reason to believe the Respondent violated ARS 16-948(C)
22 which requires a participating candidate to pay monies
23 from a participating candidate's campaign account
24 directly to the person providing goods or services to
25 the campaign; and shall identify on the report pursuant

1 to Article 1 of this chapter: The full name, the street
2 address of the person, and the nature of the goods and
3 services, and compensation for which payment has been
4 made."

5 CHAIRPERSON BUSCHING: Mr. Lang, would the
6 invoices that Mr. Lemon would have been looking at the
7 same as the ones that you looked at in your
8 investigation or would they -- those invoices have been
9 revised in the interim?

10 MR. LANG: Madame Chair, my understanding is
11 that the invoices were the same. But, again,
12 Representative Murphy is here to correct me if I'm
13 wrong. The problem is, they just didn't have that
14 detail and I don't think they ever did.

15 CHAIRPERSON BUSCHING: Okay. Other questions
16 or comments by members of the Commission?

17 Perhaps I can ask you, Mr. Murphy, is Mr.
18 Lemon's analysis of the invoices correct?

19 MR. MURPHY: I do not have a specific
20 recollection of, you know, from memory of that document
21 to answer that question without looking at it.

22 Okay. He is referring in that particular item
23 that was referenced to the campaign finance reports
24 which, in fact, there probably were checks written to
25 cover multiple invoices. So, for example, if I received

1 an invoice dated May -- and I'm just going to, for
2 example, pick numbers out of the air -- May 18th or
3 August 18th for 3,000 of the immigration mailer and the
4 broken out cost per mailer and then the total. And then
5 another one on August 19th for 2,000 of the introductory
6 mailer. And then the same, you know, per piece broken
7 out, et cetera. And these are the types of invoices
8 that I did furnish the Commission that are very specific
9 to-the-penny dollar amounts for specific items on
10 specific date.

11 I probably wrote checks for multiple of those
12 invoices at a time and then put in there "mailings," you
13 know, "signs," whatever the case might have been.

14 This is referring to the campaign finance
15 report; however, those invoices with the further detail
16 as to-the-penny expenditures, and exactly what they were
17 and how many of them there were, and what the date was,
18 those were all provided to the Commission a
19 year-and-a-half ago.

20 CHAIRPERSON BUSCHING: Okay.

21 MR. MURPHY: The only distinction there is, you
22 know, the checks were written to Mr. Querard. He was my
23 vendor. He was the one providing me those goods. And
24 now you get into the semantical question of, how far
25 down the line do we have to go? How far down the line

1 does 948(C) require?

2 For example, if I have -- if the interpretation
3 is that I have to break out the printing and the
4 mailing, well the printer got paper from somewhere, and
5 he got ink from somewhere, and he, you know, he paid his
6 employees. I mean, do I have to go down that line even
7 further and say the paper came from this place and it
8 cost this much, and the ink came from this place and it
9 cost this much?

10 There comes a point where it becomes redundant
11 and silly to keep going down that road. And I think
12 reasonable minds can differ as to who your vendor is,
13 whether or not there's a subvendor, and whether or not
14 or not there's a subvendor to keep going down that road
15 with further detail. I had no reason to believe Mr.
16 Querard was not my vendor. And no reason to believe I
17 had any obligation or necessity to go into any further
18 detail than that.

19 CHAIRPERSON BUSCHING: Okay. Thank you.

20 Mr. Lang, I take it so far we've been
21 unable to obtain the invoices?

22 MR. LANG: That's -- that's correct.

23 CHAIRPERSON BUSCHING: Okay.

24 MR. MURPHY: Madame Chair, I told Mr. Lang that
25 it's possible -- I would have to look -- that those

1 invoices might be available on my campaign Website
2 because I've tried to be as open as possible and make
3 all the documentation of this case available to any
4 voter that might be interested. And so if you have a
5 computer that I can look on, it's possible I might be
6 able to download those very quickly if they're there.

7 CHAIRPERSON BUSCHING: Okay.

8 MR. LANG: Representative Murphy, your Website
9 is --

10 MR. MURPHY: Rickmurphyaz.com.

11 CHAIRPERSON BUSCHING: All right. I would like
12 to obtain some legal advice, so I will move that we go
13 into executive session.

14 COMMISSIONER JOLLEY: I will second that.

15 CHAIRPERSON BUSCHING: It's been moved by the
16 Chairman and seconded by Commissioner Jolley that we go
17 into executive session. All in favor say, "aye."

18 (Chorus of ayes.)

19 CHAIRPERSON BUSCHING: Opposed, nay?

20 Chair votes aye. Motion carries.

21 And for the record, Commissioner Kunasek did
22 you vote "aye" or "nay"?

23 COMMISSIONER KUNASEK: I voted "aye."

24 CHAIRPERSON BUSCHING: And Commissioner
25 Scaramazzo?

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1 COMMISSIONER SCARAMAZZO: "Aye."

2 CHAIRPERSON BUSCHING: Thank you.

3
4 (Whereupon the public retires from the meeting
5 room.)

6
7 (Whereupon the Commission is in executive
8 session from 11:21 a.m. until 11:37 a.m.)

9
10 (Whereupon all members of the public are
11 present and the Commission resumes in general session.)

12
13 CHAIRPERSON BUSCHING: We're back on the
14 record. We have just been in executive session and I
15 failed to read at the beginning of it, so I'll read it
16 now. Minutes of and discussions made at an executive
17 session are confidential pursuant to ARS Section
18 38-431.03(B) and shall not be released to anyone unless
19 specifically authorized by law.

20 In addition, we have been provided copies of
21 the invoices by staff. And I would like to just confirm
22 with Mr. Murphy that you agree that these are the
23 invoices that were submitted to the Commission?

24 MR. MURPHY: Yes, that's correct.

25 CHAIRPERSON BUSCHING: Okay. Thank you. And I

1 guess we're in discussion with members of the Commission
2 and the issue is whether we uphold the recommendation of
3 the Executive Director that we find probable cause in
4 the matter of the Rick Murphy 2004 campaign.

5 Other discussion by members of the
6 Commission?

7 COMMISSIONER KUNASEK: Well, my -- this is
8 Commissioner Kunasek. My concern is if we issue an
9 order finding probable cause then the next step would be
10 to have an appeal, or to have an administrative law
11 judge appointed, or to try to enter into negotiations
12 for settlement; is that -- are those some of the
13 options?

14 CHAIRPERSON BUSCHING: Yes, Commissioner
15 Kunasek. Mr. Murphy -- if we were to find probable
16 cause, Mr. Murphy would be able to appeal to the
17 administrative law judge and have a hearing there or
18 enter into settlement negotiations or just accept the
19 action of the Commission and then if there were a fine
20 involved, pay the fine.

21 COMMISSIONER KUNASEK: The position I'm in is
22 one of a newcomer to the Commission. I'm not familiar
23 with the history of this case or some of the detail of
24 it; however, I think I heard Mr. Lang say that there had
25 been discussions and settlement offers made that were

1 rejected by Mr. Murphy; is that correct?

2 MR. LANG: Commissioners, that's correct.

3 COMMISSIONER KUNASEK: And based on that,
4 what's to lead a person to believe that he would be
5 willing to enter into a settlement negotiation again on
6 this case?

7 CHAIRPERSON BUSCHING: Mr. Lang?

8 MR. LANG: Commissioners, that's simply his
9 option. At any time he, you know, we can designate one
10 of the Commissioners to negotiate with him and that's
11 certainly his option. He may be willing to discuss it.

12 COMMISSIONER KUNASEK: All right. Thank you.

13 CHAIRPERSON BUSCHING: Any other discussion?
14 The only other discussion that, I guess, I would like to
15 say is that I appreciated the time and effort that Mr.
16 Murphy put into filing his response. And carefully
17 considering everything, I found that much of what he
18 wrote to not be germane to the issue that we have here
19 today. And, obviously, any matter before the
20 Commission, the more we can focus on the issues that are
21 in front of the Commission, and the less that we can
22 focus on extraneous issues, the better off we will be.
23 And in looking at it, I think the issue is the
24 violation -- whether there was a violation of Section
25 16-948(C). I've been provided with copies of the

1 invoices. I don't believe that those invoices comply
2 with the reporting requirements of that section, and so
3 in my opinion I am in agreement with the Executive
4 Director and will be in favor of finding the probable
5 cause.

6 But having said that, other discussion among
7 the Commissioners? Commissioner Parker?

8 COMMISSIONER PARKER: I look at these invoices
9 and it does say what the money's being spent on. It
10 tells you the number of pieces that are being mailed,
11 the number of phone calls that were made, the topics of
12 his mailings, and given the generic statement in the
13 blue book that the candidates were given, to me this
14 would meet that test in my opinion.

15 So -- I guess I'm caught in a catch-22 in a
16 sense of the Commission wanting greater detail than what
17 was initially asked for by the candidates. And I'm
18 wondering if there -- if there's a way to, I guess, in
19 the art of compromise or whatever, to -- I'm not sure
20 how to say this -- but in a sense of -- I think the fine
21 is excessive for the intent of what he was trying to
22 provide. And I have a hard time fining somebody \$10,000
23 over these set of invoices. And I don't know if there's
24 a way to revise the fine amount or anything like that.

25 CHAIRPERSON BUSCHING: Mr. Lang, do you want to

1 respond?

2 MR. LANG: I think Ms. Varela may have
3 something to say as well, but thank you, Commissioners.
4 The only comment I would have on the fine amount is
5 simply that, given the fact that we were willing to
6 settle for zero, this fine is typically what we do, when
7 we cannot reach a settlement, we determine what the fine
8 should be and then calculate it accordingly. So I
9 recommended the \$10,000 because we were unable to
10 resolve the case and I think it's appropriate in this
11 matter.

12 I would say I should clarify. Unfortunately,
13 Representative Murphy and this office seemed to have a
14 communication problem because we never received these
15 invoices. He said he e-mailed to Colleen Connor --

16 MR. MURPHY: I can prove it.

17 MR. LANG: -- and he says he can prove it. He
18 says he e-mailed these to Colleen Connor on 9/28,
19 unfortunately they weren't in the file. But we have --
20 and he said we didn't have somethings we sent him. But
21 we got to work on that.

22 We have them now. These have wonderful detail,
23 the problem is they don't detail the subvendors which is
24 the whole requirement. If these were subvendor contract
25 -- or invoices we wouldn't be here because these are

1 exactly what we want, these kind of detail. The problem
2 is, we don't know how much the subvendor was paid.

3 COMMISSIONER PARKER: Excuse me for
4 interrupting, but part of the problem would be the
5 communication. You recognize the fact that he did or
6 did not receive a letter stating that they wanted that
7 from the candidate and in the blue book itself doesn't
8 explain that. So I think in a sense we're trying to
9 hold somebody to the standard that we haven't even held
10 ourselves to in this blue book.

11 Like I said, I'm the new kid on the block. So
12 maybe I'm flying off the wall or something. But to me,
13 if I was a candidate and I was given this in the class
14 that this agency taught, and I look on there and it
15 tells me what I'm required, and then they come back and
16 tell me, well, you have to have this, this, and this
17 extra afterwards and if you don't give it to me, I'm
18 going to fine you \$10,000, that just doesn't sit well.

19 MR. LANG: Okay.

20 COMMISSIONER PARKER: Like I said, that's just
21 one person's opinion.

22 CHAIRPERSON BUSCHING: Commissioner Parker, I
23 certainly agree with you in the context in which you're
24 speaking; however, what has happened in this case is a
25 little bit different insofar as Mr. Murphy, as the other

1 candidates when this issue was brought to their
2 attention, they modified their reports and gave the
3 detail. And so it's not like he wasn't given a chance
4 to correct the situation.

5 I mean, he was given the chance and, in fact,
6 we're only here today, you know, one-and-a-half years
7 after the election occurred because Mr. Murphy has been
8 given extension after extension to comply. And so we've
9 tried to bend over backwards to allow him to come in
10 compliance with the requirements. And, unfortunately,
11 we're here today because he doesn't want to.

12 MR. MURPHY: Madame Chair, I would like to
13 rebut a little bit of Mr. Lang's statement regarding
14 settlement.

15 CHAIRPERSON BUSCHING: I'll give you two
16 minutes.

17 MR. MURPHY: Thank you, Madame Chair. Mr. Lang
18 had mentioned that I had refused outright to settle and
19 that's not exactly accurate. We discussed sometime ago
20 the possibility of providing the detail so long as the
21 Commission was willing -- I mean, my reports and my
22 campaign has been scrutinized up one side and down the
23 other. There's been an audit that's found absolutely
24 nothing wrong. There's been umpteen different
25 examinations up to this point.

1 All I asked for was some certainty. And what I
2 asked him for was the Commission give me in writing
3 confirmation that there are no other violations of
4 948(C), in particular anywhere else in my reports and
5 that it would not be coming back at me again at a later
6 date if I were to provide the detail he requested on the
7 specific items he requested and this would be done with
8 and over with.

9 I wanted some certainty because if I'm going to
10 let the Commission get away with changing the rules
11 after the fact, which is exactly what this is, at the
12 very least I wanted some certainty that it was a
13 one-time thing and wasn't going to happen again and I
14 was going to be judged as not having broken the law.
15 And I was not able to get that assurance.

16 And so in the absence of that assurance, what
17 exactly am I supposed to think? There are other
18 candidates out there like Representative Gorman, like
19 Representative Rosati who have settled on this
20 particular matter and have been receiving Attorney
21 General inquiries and everything else related to that
22 same issue. So if settling doesn't resolve the issue
23 permanently, what exact reason would I have to settle?

24 CHAIRPERSON BUSCHING: Thank you.

25 MR. MURPHY: I mean, that's kind of a silly way

1 to look at it, that I should go ahead and just settle
2 and then, oh, maybe it's over, maybe it's not.

3 CHAIRPERSON BUSCHING: Thank you, sir.
4 Appreciate your comments.

5 MR. MURPHY: Well, and one last point with
6 regard to the fact that the rule was there all along.
7 If the rule was there all along and that was the
8 interpretation all along, then why the substantive
9 policy statement in December? You can't hold me to a
10 substantive policy statement that you just passed five
11 months ago and force me a year-and-a-half earlier to
12 comply with it.

13 If it was a rule then, why did you need the
14 substantive policy statement? If it was so clear, why
15 did you need the substantive policy statement? The fact
16 is it wasn't clear and not even important enough to
17 bother to include it in this year's book. The word
18 "subvendor" does not appear one time in this year's
19 documentation other than in that one little statement
20 that is not even in the blue book.

21 CHAIRPERSON BUSCHING: Thank you.

22 Mr. Lang, would you like to respond to
23 any of the comments?

24 MR. LANG: Actually, it's interesting because
25 one of the reasons we did the substantive policy

1 statement is that Representative Murphy suggested we do
2 the substantive policy statement. So we did it to
3 satisfy him and others to clarify even though we sent
4 out the letter.

5 As for the settlement, maybe -- maybe there's
6 an opening for settlement for the Commission down the
7 road given what he said. But, ultimately, he gave me a
8 list of bullet-point promises he needed me to make
9 regarding criminal investigations at the AG Office that
10 I don't even know if they exist. And, of course, I
11 couldn't do that and I couldn't promise we'd never go
12 after him for these sort of violations, because I don't
13 know what else is out there.

14 I think Mr. Murphy is dealing with us honestly
15 or forthrightly, but for all I know there is some awful
16 evidence out there and some -- in other words, I
17 couldn't promise if some new evidence came to light, we
18 couldn't do anything. But, ultimately, if the
19 Commission would like to do that, that's up to the
20 Commission.

21 CHAIRPERSON BUSCHING: Okay. Thank you. Other
22 further discussion or questions?

23 If not, the Chair will entertain a motion.
24 Commission Jolley.

25 COMMISSIONER JOLLEY: Yes, in the matter under

1 review, Number 04-0079, Rick Murphy 2004 Campaign, that
2 the Commission find that his campaign failed to meet the
3 reporting requirements of ARS Section 16-948(C) and that
4 the Commission issue just one penalty of \$10,000.

5 CHAIRPERSON BUSCHING: Okay. Is there a
6 second?

7 COMMISSIONER SCARAMAZZO: I'll second that.

8 CHAIRPERSON BUSCHING: Okay. It's been moved
9 by Commissioner Jolley and seconded by Commissioner
10 Scaramazzo that we affirm the probable cause
11 recommendation of the Executive Director and find
12 probable cause in the matter of Rick Murphy and assess
13 the penalty stated therein. Further discussion?

14 I want to say before we vote that I'm going to
15 vote in favor of the motion. As a member of the Clean
16 Elections Commission, I am here trying to do the best to
17 enforce the will of the voters of the state of Arizona.
18 I think that as part of that there is a requirement to
19 list the detail on invoices. I believe that Mr. Murphy
20 has failed to do that, and as we've spoken earlier
21 today, certainly if he was willing to amend his reports
22 earlier on, I certainly would not be interested at this
23 point in assessing the kind of penalty that's here. But
24 because it appears that Mr. Murphy wants to test this
25 law as opposed to comply with it, I think we have no

1 choice but to go ahead and uphold the Executive
2 Director's recommendation.

3 Other discussion? If not --

4 COMMISSIONER KUNASEK: Call for the question.

5 CHAIRPERSON BUSCHING: Mr. --

6 COMMISSIONER KUNASEK: Kunasek. Call for the
7 question.

8 CHAIRPERSON BUSCHING: Commissioner Kunasek has
9 called for the question, all in favor say, "aye."

10 (Chorus of ayes.)

11 CHAIRPERSON BUSCHING: Opposed, nay?

12 Chair votes aye. And I'm sorry, I did
13 not hear everybody so I'll take a roll call vote.
14 Commissioner Jolley?

15 COMMISSIONER JOLLEY: Aye.

16 CHAIRPERSON BUSCHING: Commissioner Scaramazzo?

17 COMMISSIONER SCARAMAZZO: Aye.

18 CHAIRPERSON BUSCHING: Commissioner Kunasek?

19 COMMISSIONER KUNASEK: Aye.

20 CHAIRPERSON BUSCHING: Commissioner Parker?

21 COMMISSIONER PARKER: Nay.

22 CHAIRPERSON BUSCHING: There's four ayes and
23 one nay. The motion carries.

24 Next item, Agenda Item VIII, discussion and
25 consideration of personnel matter performance assessment

1 and six-month review of the Executive Director. Oh, I'm
2 sorry -- if approved -- let me go back to Agenda Item
3 VII. We have not taken up the second part of that.

4 If approved, consideration and designation of
5 CCEC representative for possible informal settlement
6 conference. Is there someone on the Commission that
7 would like to volunteer to be the representative or
8 would like to nominate someone else?

9 COMMISSIONER SCARAMAZZO: I would volunteer if
10 nobody else has an overriding desire.

11 CHAIRPERSON BUSCHING: Okay.

12 COMMISSIONER JOLLEY: I would recommend that
13 Commissioner Scaramazzo volunteer since he's out of the
14 district and Maricopa County. So, I agree with that.

15 CHAIRPERSON BUSCHING: You want to turn that
16 into a motion?

17 COMMISSIONER JOLLEY: Okay, I will make a
18 motion that Commissioner Scaramazzo be the designated
19 CCEC representative in the matter under review 04-0079.

20 CHAIRPERSON BUSCHING: Is there a second?

21 COMMISSIONER KUNASEK: Second.

22 CHAIRPERSON BUSCHING: It's been moved by
23 Commissioner Jolley and seconded by Commissioner Kunasek
24 that should Mr. Murphy want to have settlement -- a
25 settlement conference, that Commissioner Scaramazzo be

1 the designated CCEC representative.

2 Any further discussion? If not, the Chair will
3 call for the question, all in favor say, "aye."

4 (Chorus of ayes.)

5 CHAIRPERSON BUSCHING: Opposed, nay?

6 Chair votes aye. Motion carries.

7 Now we'll move to Agenda Item VIII, discussion
8 and consideration of personnel matter performance
9 assessment and six-month review of the Executive
10 Director. The Commissioner -- the Commission may vote
11 to go -- to discuss this matter in executive session
12 pursuant to ARS Section 38-431.03(A)(1). Note, no
13 deliberations or voting will take place in executive
14 session. Any legal action will take place in open
15 session.

16 Mr. Lang, I believe I received back from you --
17 as Chairman, I sent to you a notice that you were --
18 your evaluation was going to be discussed and I did
19 receive back from you a receipt of that notice. And I
20 received also a form that indicates, Pursuant to notice
21 of executive session for six-month evaluation dated May
22 23rd, I elect that my six-month performance evaluation
23 be conducted by the Commission in executive session.
24 And that was signed and dated.

25 So we need to vote to go into executive

1 session.

2 MS. VARELA: Just to clarify that the
3 Commission needs to vote to go into executive session
4 which means you could not vote to do that, but Todd has
5 the right to elect that it happens in open session.
6 That's the only choice he has. He can force it into
7 open session, he has not done that. So the ball is in
8 your court.

9 COMMISSIONER PARKER: I'll so move.

10 COMMISSIONER JOLLEY: I'll second that.

11 CHAIRPERSON BUSCHING: It's been moved by
12 Commissioner Parker and seconded by Commissioner Jolley
13 that we go into executive session. All in favor say,
14 "aye."

15 (Chorus of ayes.)

16 CHAIRPERSON BUSCHING: Nay?

17 Chair votes aye. Motion carries.

18
19 (Whereupon the public retires from the meeting
20 room.)

21
22 (Whereupon the Commission is in executive
23 session from 11:58 a.m. until 12:13 p.m.)

24
25 (Whereupon all members of the public are

1 present and the Commission resumes in general session.)

2
3 CHAIRPERSON BUSCHING: We are now back in
4 regular session of the Citizens Clean Elections
5 Commission on Thursday, May 25th. And the next item on
6 the agenda is Item IX --oh, I should say we were just in
7 executive session with respect to discussion and
8 consideration of personnel matter.

9 Ms. Varela, do we need to say anything in open
10 session on that?

11 MS. VARELA: No, if you've concluded his
12 evaluation you can just state that and that's the end of
13 it.

14 CHAIRPERSON BUSCHING: We've concluded Mr.
15 Lang's evaluation and we have asked him to give us -- to
16 put compensation issues for him on the agenda for next
17 month. So we will address his compensation at the next
18 regularly scheduled meeting.

19 Item IX, call for public comment. This is the
20 time for consideration and discussion of comments and
21 complaints from the public. Action taken as a result of
22 public comment will be limited to directing staff to
23 study the matter or rescheduling the matter for further
24 consideration and decision at a later date or responding
25 to criticism.

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1 Is there any member of the public that wishes
2 to speak?

3 MR. LANG: I encourage -- Commissioners, I
4 encourage Mr. Ehst to come up and introduce himself.

5 MR. EHST: I guess that's all I would have to
6 say at this point. My name is Eric Ehst. I'm the new
7 Executive Director of the Clean Elections Institute, the
8 nonprofit organization that is continually confused with
9 the Commission to the point where we get each other's
10 mail. And I am here to support the Clean Elections Act
11 and to provide any information or support that the
12 Commission may ask of me. We are here to support the
13 Act and continue it in existence and improvement --
14 improve it, enhance it, expand it, whatever we can do.
15 And I would be happy to provide the Commission with
16 whatever assistance I can.

17 CHAIRPERSON BUSCHING: Thank you. Thank you.

18 Any other members of the public wish to
19 speak?

20 If not, we were passed out in the interim with
21 the Proposed Order and Notice of Appealable Agency
22 Action in the matter of Rick Murphy. Does the
23 Commission -- Ms. Varela, does the Commission need to do
24 anything with respect --

25 MS. VARELA: Yeah, as the Commission you need

1 to review that and consider it and vote on that
2 particular order. And this has to do, like I said, with
3 the Rick Murphy matter. You just made the probable
4 cause finding and what we usually do in a case where
5 there is a probable cause recommendation, is we prepare
6 an order ahead of time so that in the event the
7 Commission adopts the recommendation of the Executive
8 Director and finds probable cause, the order can be
9 signed -- can be approved and signed. Otherwise, we
10 need to wait until the next meeting because it is
11 something the Commissioners review and approve and then
12 it's signed by the Chairwoman.

13 CHAIRPERSON BUSCHING: And the fact that we
14 have two Commissioners that are appearing by telephone,
15 are they -- were they able to get copies of this?

16 MS. VARELA: No.

17 CHAIRPERSON BUSCHING: So it would be a
18 question of whether the three that are present approve
19 it, or not, or --

20 MS. VARELA: Or we could read it to them.

21 MR. LANG: Would you like me to read it?

22 Commissioners, in particular Commissioner
23 Kunasek and Commissioner Scaramazzo, I'm going to read
24 the proposed order. It's similar to other orders you've
25 seen before.

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1 COMMISSIONER KUNASEK: Okay.

2 MR. LANG: "In the matter of Rick Murphy,
3 Respondent. Order and Notice of Appealable Agency
4 Action. Findings of Fact and Law.

5 "1. Rick Murphy (Respondent), a participating
6 candidate for State Representative District 9,
7 registered with the Arizona Secretary of State to be a
8 legislative candidate in the 2004 election. Respondent
9 was a participating candidate as defined in the ARS
10 Section 16-961(C)(1) of the Citizens Clean Elections
11 Act, ARS 16-940, et seq.

12 "2. On October 11, 2005, Phil Hanson
13 (Complainant) filed a complaint against Respondent,
14 alleging that Respondent failed to comply with
15 16-948(C), which requires that participating candidates
16 shall pay monies from a participating candidate's
17 campaign account directly to a person providing goods or
18 services to the campaign and shall identify, on a report
19 filed pursuant to Article 1 of this chapter, the full
20 name and street address of the person and the nature of
21 the goods and services and the compensation for which
22 payment was made. The Complaint incorporates portions
23 of the previous complaint filed by Complainant and
24 refers to evidence considered by the Citizens Clean
25 Elections Commission in connection with MUR No.

1 04-0029."

2 As a matter of explanation that would be the
3 earlier enforcement matter that the Commission dismiss.

4 "3. At the January 26, 2006 meeting of the
5 Commission, Executive Director Todd Lang presented his
6 statement of reasons recommending that the Commission
7 find reason to believe that Respondent has violated ARS
8 Section 16-948(C) of the Citizens Clean Elections Act.

9 "4. The statement of reasons stipulates that
10 Respondent's campaign finance reports show expenditures
11 to Constantine Querard for \$20,556.37, which
12 expenditures were variously described as 'mailing',
13 'signs' or 'automated calls'. Mr. Querard used the
14 funds to pay subvendors, who actually provided such
15 goods and services. However, the names and addresses of
16 the actual vendors for these services (i.e. printers,
17 mailhouses, designers, etc.) were not identified in
18 invoices from Mr. Querard nor were the dollar amounts
19 paid to those vendors disclosed.

20 "5. Thus, Respondent violated ARS Section
21 16-948(C) by failing to pay directly or to identify on
22 the campaign finance reports the subvendors who provided
23 the goods or services.

24 "6. Pursuant to ARS Section 16-942(B), 'In
25 addition to any other penalties imposed by law, the

1 civil penalty for a violation on behalf of any candidate
2 of any reporting requirement imposed by this chapter
3 shall be \$100 per day for candidates for the
4 legislature... The penalty imposed by this subsection
5 shall be doubled if the amount not reported for a
6 particular election cycle exceeds 10 percent of the
7 adjusted primary or general election spending limit. No
8 penalty imposed pursuant to this subsection shall exceed
9 twice the amount of the expenditures or contributions
10 not reported. The candidate and the candidate's
11 campaign account shall be jointly and severally
12 responsible for any penalty imposed pursuant to this
13 subsection'."

14 I'll say as another matter of explanation
15 that's actually gone up. Law allow for changes. In the
16 2004 election cycle it was \$110.

17 "7. Pursuant to AAC R2-20-222, a civil penalty
18 negotiated by the Commission or imposed by a court for a
19 violation of the Act shall not exceed the greater of
20 \$10,000 or an amount equal to any contribution or
21 expenditure involved in the violation. In the case of a
22 knowing and willful violation, the civil penalty shall
23 not exceed the greater of \$15,000 or an amount equal to
24 200 percent of any contribution or expenditure involved
25 in the violation."

1 As another matter of explanation I did not find
2 that this violation was knowing or recommend that you
3 find that.

4 "8. Based on the foregoing, the Commission
5 finds probable cause that Respondent violated the Act,
6 as set forth in the Executive Director's probable case
7 brief and probable cause recommendation, both of which
8 are incorporated herein by reference."

9 Then we go to the order.

10 "Order. Pursuant to ARS Section 16-942 and
11 16-957 and AAC R2-20-215, R2-20-217 and R2-20-222, the
12 Commission hereby orders the following:

13 "1. Respondent shall pay a civil penalty in
14 the amount of \$10,000. This shall be satisfied upon
15 receipt of payment to the Clean Elections Fund at the
16 Citizens Clean Elections Commission, 1616 W. Adams,
17 Suite 110, Phoenix, Arizona 85007."

18 Then we give appropriate notice actions.

19 "Notice of Appealable Agency Action. You have
20 the right to appeal this Order pursuant to the Arizona
21 Administrative Procedures Act, ARS Section 41-1092.

22 "You may request an administrative hearing by
23 submitting a written request for a hearing within 30
24 days from receipt of this Order. The request for a
25 hearing shall identify the party, the party's address,

1 the agency and the action being appealed and shall
2 contain a concise statement of the reasons for the
3 request for the hearing. The written request for a
4 hearing shall be sent to the Citizens Clean Elections
5 Commission, 1616 W. Adams, Suite 110, Phoenix, Arizona
6 85007.

7 "If you request a hearing, you may request an
8 informal settlement conference pursuant to ARS Section
9 41-1092.06.

10 "Individuals with a disability may request
11 reasonable accomodation by contacting Citizens Clean
12 Elections Commission," and gives our address and
13 telephone number, "and during a hearing by contacting
14 the Office of Administrative Hearings," and it gives
15 their address. And it is, "1400 W. Washington, Suite
16 101, Phoenix, Arizona 85007, Telephone 602-542-9826.
17 Requests should be made as early as possibly to allow
18 time to arrange the accomodation."

19 And it's dated with the signature line and
20 certificate of service.

21 COMMISSIONER KUNASEK: Thank you.

22 CHAIRPERSON BUSCHING: Is there a motion to
23 approve?

24 COMMISSIONER JOLLEY: So moved.

25 COMMISSIONER KUNASEK: So moved.

1 CHAIRPERSON BUSCHING: It's been moved by
2 Commissioner Jolley and seconded by Commissioner Kunasek
3 that we approve the Order and Notice of Appealable
4 Agency Decision in the matter of Rick Murphy MUR No.
5 04-0079.

6 Any further discussion? Mr. Lang?

7 MR. LANG: Actually, the Assistant Attorney
8 General pointed out that in the off chance that
9 Respondent does not appeal, we should put a timeline for
10 him to pay the fine. So you may want to hand write in,
11 "within 30 days."

12 MS. VARELA: Under the part that says, "Order,
13 No. 1, Respondent shall pay a civil penalty satisfied,
14 shall be satisfied upon receipt" -- blah, blah, blah --
15 "within 30 days of the date of order." So that in the
16 event he doesn't appeal it to OHA or try to go to
17 Superior Court, this is the finality to this order.
18 Otherwise, he could say, well, it doesn't tell me when.

19 CHAIRPERSON BUSCHING: So it should say:
20 Respondent shall pay within 30 days?

21 COMMISSIONER PARKER: Of this order? Or is it
22 of -- of the settlement? Or the ALJ action? Because,
23 like, if he had to pay within 30 days and couldn't do
24 his hearing for 31 days --

25 MS. VARELA: Well, no. When he -- when he

1 requests a hearing all of that is just stayed.

2 MR. LANG: It stops.

3 MS. VARELA: Everything stops.

4 COMMISSIONER PARKER: I didn't understand that.

5 MS. VARELA: Yeah.

6 CHAIRPERSON BUSCHING: So what language would
7 you propose?

8 MR. LANG: How about after \$10,000, "within 30
9 days"?

10 MS. VARELA: Yeah, uh-huh.

11 CHAIRPERSON BUSCHING: Within 30 days where
12 \$10,000?

13 MR. LANG: Uh-huh. We'll go ahead and make
14 that change.

15 CHAIRPERSON BUSCHING: Is that amendment
16 acceptable to you, Commissioner Jolley?

17 COMMISSIONER JOLLEY: Yes, it is.

18 CHAIRPERSON BUSCHING: And to you, Commissioner
19 Kunasek?

20 COMMISSIONER KUNASEK: Yes.

21 CHAIRPERSON BUSCHING: Okay. All right. Any
22 other comments before I call for the question?

23 If not, the Chair will call for the question,
24 all in favor of the motion with the modification say,
25 "aye."

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1 (Chorus of ayes.)

2 CHAIRPERSON BUSCHING: Opposed, nay?

3 Chair votes aye. Motion carries.

4 Item No. X, adjournment.

5 COMMISSIONER PARKER: So moved.

6 COMMISSIONER JOLLEY: Second.

7 CHAIRPERSON BUSCHING: All in favor say, "aye."

8 (Chorus of ayes.)

9 CHAIRPERSON BUSCHING: Opposed, nay?

10 Chair votes aye. Motion carries.

11 This meeting is adjourned.

12
13 (Whereupon the proceeding concludes at 12:25

14 p.m.)

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C E R T I F I C A T E

I, Angela Furniss Miller, Certified Reporter,
do hereby certify that the foregoing pages numbered 1
through 92, inclusive, constitute a full and accurate
printed record of my stenographic notes taken at said
time and place, all done to the best of my skill and
ability.

DATED, at Phoenix, this 31st day of May, 2006.

Angela Furniss Miller, RPR
Certified Reporter (AZ50127)

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